



U.S. Citizenship
and Immigration
Services



FILE:



Office: TEXAS SERVICE CENTER

Date:

OCT 27 2004

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f) (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
(2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on July 8, 2003.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet

his burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On October 1, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous physical presence in the United States. The applicant, in response, provided evidence of identity and nationality and documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on October 27, 2003.

On appeal, the applicant does not make a statement or provide any evidence to establish eligibility for late registration. The applicant submits photocopies of documentation relating to his claim of continuous residence and physical presence in the United States during the requisite periods. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous physical presence in the United States since January 5, 1999.

In an attempt to establish continuous physical presence in the United States since January 5, 1999, the applicant initially submitted Moneygram money transfer receipts indicating the applicant purportedly transferred money to an individual in Honduras on April 15, 1998; May 10, 1998; June 20, 1998; July 11, 1998; August 9, 1998; September 25, 1998; October 4, 1998; and, December 19, 1998.

As stated above, the applicant was requested on October 1, 2003, to submit additional evidence establishing his qualifying continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. pay statements from Xtreme Contractors, Inc. for the following dates: January 7, 1999; January 14, 1999; January 22, 1999; February 5, 1999; December 4, 1999; and, December 23, 1999;

2. Envios Urgentes money transfer receipts indicating that the applicant transferred money to an individual in Honduras on September 29, 1999; October 18, 1999; and, November 1, 1999;
3. Fed Ex shipping receipts indicating that Carlos Valiente of Trade Power Service, Inc., of Miami, Florida, mailed packages to the applicant on September 23, 1999 and December 13, 1999;
4. three Urgente Express, Inc. mailing envelopes addressed to the applicant at 1207 Summer St., Houston, Texas, postmarked June 8, year illegible, December 18, 2000, and (day and month illegible) 2000.

The director concluded that the applicant had failed to establish his qualifying continuous physical presence in the United States since January 5, 1999, and denied the application.

On appeal, the applicant states that he would like to be given "the opportunity to continue being legal in this country in which with a lot of difficulty I have lived here without having the opportunity of being employed and also given the chance to pay my taxes." He repeats his claim to have lived in the United States since 1998 and provides photocopies of documents previously submitted in response to the director's request for additional evidence.

The record indicates that the applicant was apprehended by United States Border Patrol on September 14, 1999, near Eagle Pass, Texas. According to the Form I-213, Report of Deportable Alien, the applicant told the Border Patrol Agents who apprehended him that he departed Honduras on August 21, 1999 by bus, traveled through Guatemala to Mexico, and arrived in Piedras Negras, Coahuila, Mexico, on September 13, 1999. It is noted that the applicant did not indicate to the arresting officers that he was returning to the United States to resume an unlawful residence. Rather, he told the Border Patrol Agents that he was en route to Houston, Texas, where his aunt lived. He was not able to provide the arresting officers with any address in the United States.

The applicant requested a removal hearing before an Immigration Judge. He was released on his own recognizance and ordered to report in person to the Deportation Office, San Antonio, Texas, for institution of removal proceedings. The applicant failed to appear at the San Antonio Deportation Office as ordered. He also failed to provide the Immigration Judge in San Antonio with written notice of his correct address within five days as required at section 239(a)(1)(F) of the Act. Accordingly, the Immigration Judge ordered the applicant removed from the United States in absentia on September 21, 2000. The District Director, San Antonio, issued a Warrant of Removal/Deportation on October 2, 2000; the order is still outstanding as of the date of this decision.

The applicant's documented entry into the United States on September 19, 1999, contradicts his claim on the Form I-821 to have entered the United States on February 22, 1998. The applicant has not provided any explanation for this contradiction between his claimed date of entry and his date of apprehension. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988). In view of this contradiction, the evidence submitted by the applicant in support of his claim of continuous physical presence in the United States since January 5, 1999, does not appear

to be credible and cannot be accepted as proof of continuous physical presence in the United States since January 5, 1999. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

Beyond the decision of the director, the applicant has not provided sufficient evidence to establish continuous residence in the United States since December 30, 1998. Therefore, the application also may not be approved for this reason. It is noted that the applicant indicated on the Form I-821 that he had never been under immigration proceedings. Therefore, he may be inadmissible to the United States under section 212(a) (6)(c)(i) of the Act as an alien who, by fraud or willfully misrepresenting a material fact, sought to procure an immigration benefit. Since the appeal will be dismissed on the ground discussed, this issue will not be addressed further at this time.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.